

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DATAPRO INTERNATIONAL INC., a  
Delaware corporation,

Plaintiff,

v.

LG ELECTRONICS U.S.A., INC., a Delaware  
corporation, and LG ELECTRONICS, INC., a  
Korean corporation,

Defendants.

No. 2:13-cv-01604 RAJ

**LG ELECTRONICS U.S.A., INC.'S  
ANSWER TO THE COMPLAINT AND  
AFFIRMATIVE DEFENSES**

LG ELECTRONICS U.S.A.' INC.'S ANSWER TO  
COMPLAINT  
No. 2:13-cv-01604 RAJ

**CORR CRONIN MICHELSON  
BAUMGARDNER & PREECE LLP**  
1001 Fourth Avenue, Suite 3900  
Seattle, Washington 98154-1051  
Tel (206) 625-8600  
Fax (206) 625-0900

1 LG Electronics U.S.A., Inc. ("LGE USA"), in response to the Complaint for Damages  
2 and Injunctive Relief filed by plaintiff DataPro International Inc., ("DataPro") by and through  
3 its undersigned counsel, answers the Complaint as follows:

4 **ANSWER TO THE COMPLAINT**

5 This case involves the alleged infringement of technical descriptions of digital video  
6 interface (DVI) cables and connectors, where there are only so many ways to describe what  
7 these component parts are and how they function, and therefore such descriptions are subject  
8 to only thin copyright protection (if any).

9 **PARTIES**

10 1. LGE USA lacks sufficient knowledge or information to form a belief as to the  
11 truth of the allegations in paragraph 1 of the complaint, and therefore denies them.

12 2. In response to paragraph 2 of the complaint, LGE USA admits only upon  
13 information and belief that LG Electronics, Inc. is a corporation organized under the laws of  
14 the Republic of Korea and its principal place of business is located at 20 Yeouido-dong,  
15 Yeongdeungpo-qu, Seoul 150-721, Korea.

16 3. In response to paragraph 3 of the complaint, LGE USA admits only that: (i) it  
17 is incorporated in the State of Delaware; (ii) its principal place of business is located at 1000  
18 Sylvan Avenue, Englewood Cliffs, New Jersey 07633; and (iii) LGE USA is a wholly owned  
19 subsidiary of LG Electronics. LGE USA denies the remaining allegations contained in  
20 paragraph 3.

21 4. Paragraph 4 of the complaint sets forth a statement to which no response is  
22 required and is therefore denied on that basis.

**JURISDICTION AND VENUE**

5. In response to paragraph 5 of the complaint, LGE USA admits that plaintiff filed an action allegedly arising under the Copyright Act (17 U.S.C. § 101, et seq.) and the Digital Millennium Copyright Act (17 U.S.C. § 1202), but denies that any of plaintiff's claims have merit.

6. Paragraph 6 states a legal conclusion to which no response is required, and is therefore denied on that basis.

7. Paragraph 7 states a legal conclusion to which no response is required, and is therefore denied on that basis.

8. LGE USA denies that it committed the "wrongful acts alleged" in the complaint and that any of its alleged acts "caused injury to DataPro." LGE USA lacks sufficient knowledge or information to form a belief as to the truth of the remaining factual allegations in paragraph 8 of the complaint, and therefore denies them. The other allegations in paragraph 8 state a legal conclusion to which no response is required, and is therefore denied on that basis.

**BACKGROUND**

9. LGE USA lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 9 of the complaint, and therefore denies them.

10. LGE USA lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 10 of the complaint, and therefore denies them.

11. LGE USA lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 11 of the complaint, and therefore denies them.

12. LGE USA lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 12 of the complaint, and therefore denies them.

1           13. LGE USA lacks sufficient knowledge or information to form a belief as to the  
2 truth of the allegations in paragraph 13 of the complaint, and therefore denies them.

3           14. LGE USA admits only that it sells television sets but lacks sufficient  
4 knowledge or information to form a belief as to the truth of the remaining allegations in  
5 paragraph 14 of the complaint, and therefore denies them.

6           15. LGE USA denies that it reproduced, distributed, or displayed material that  
7 infringes any protectable elements of plaintiff's alleged works. LGE USA lacks sufficient  
8 knowledge or information to form a belief as to the truth of the remaining allegations in  
9 paragraph 15 of the complaint, and therefore denies them.

10          16. LGE USA lacks sufficient knowledge or information to form a belief as to the  
11 truth of the allegations in paragraph 16 of the complaint, and therefore denies them.

12          17. LGE USA is investigating plaintiff's allegations but currently lacks sufficient  
13 knowledge or information to form a belief as to the truth of the allegations in paragraph 17 of  
14 the complaint, and therefore denies them.

15          18. LGE USA is investigating plaintiff's allegations but currently lacks sufficient  
16 knowledge or information to form a belief as to the truth of the allegations in paragraph 18 of  
17 the complaint, and therefore denies them.

18          19. LGE USA denies that it reproduced, distributed, or displayed material that  
19 infringes any protectable elements of plaintiff's alleged works. LGE USA lacks sufficient  
20 knowledge or information to form a belief as to the truth of the remaining allegations in  
21 paragraph 19 of the complaint, and therefore denies them.

22          20. LGE USA lacks sufficient knowledge or information to form a belief as to the  
23 truth of the allegations in paragraph 20 of the complaint, and therefore denies them.  
24

1           21. LGE USA denies that it reproduced, distributed, or displayed material that  
2 infringes any protectable elements of plaintiff's alleged works. LGE USA lacks sufficient  
3 knowledge or information to form a belief as to the truth of the remaining allegations in  
4 paragraph 21 of the complaint, and therefore denies them.

5           22. LGE USA lacks sufficient knowledge or information to form a belief as to the  
6 truth of the allegations in paragraph 22 of the complaint, and therefore denies them.

7           23. LGE USA is investigating plaintiff's allegations but currently lacks sufficient  
8 knowledge or information to form a belief as to the truth of the allegations in paragraph 23 of  
9 the complaint, and therefore denies them.

10          24. LGE USA is investigating plaintiff's allegations but currently lacks sufficient  
11 knowledge or information to form a belief as to the truth of the allegations in paragraph 24 of  
12 the complaint, and therefore denies them.

13          25. LGE USA is investigating plaintiff's allegations but currently lacks sufficient  
14 knowledge or information to form a belief as to the truth of the allegations in paragraph 25 of  
15 the complaint, and therefore denies them.

16          26. LGE USA is investigating plaintiff's allegations but currently lacks sufficient  
17 knowledge or information to form a belief as to the truth of the allegations in paragraph 26 of  
18 the complaint, and therefore denies them.

19          27. LGE USA denies that it reproduced, distributed, or displayed material that  
20 infringes any protectable elements of plaintiff's alleged works. LGE USA lacks sufficient  
21 knowledge or information to form a belief as to the truth of the remaining allegations in  
22 paragraph 27 of the complaint, and therefore denies them.

23          28. LGE USA lacks sufficient knowledge or information to form a belief as to the  
24 truth of the allegations in paragraph 28 of the complaint, and therefore denies them.

1           29.     LGE USA denies that it reproduced, distributed, or displayed material that  
2     infringes any protectable elements of plaintiff's alleged works. LGE USA lacks sufficient  
3     knowledge or information to form a belief as to the truth of the remaining allegations in  
4     paragraph 29 of the complaint, and therefore denies them.

5           30.     LGE USA denies that it reproduced, distributed, or displayed material that  
6     infringes any protectable elements of plaintiff's alleged works. LGE USA lacks sufficient  
7     knowledge or information to form a belief as to the truth of the remaining allegations in  
8     paragraph 30 of the complaint, and therefore denies them.

9           31.     LGE USA denies that it reproduced, distributed, or displayed material that  
10    infringes any protectable elements of plaintiff's alleged works. LGE USA lacks sufficient  
11    knowledge or information to form a belief as to the truth of the remaining allegations in  
12    paragraph 31 of the complaint, and therefore denies them.

13          32.     LGE USA lacks sufficient knowledge or information to form a belief as to the  
14    truth of the allegations in paragraph 32 of the complaint, and therefore denies them.

15          33.     LGE USA admits only that counsel for the plaintiff sent a letter dated April 26,  
16    2013 alleging copyright infringement but lacks sufficient knowledge or information to form a  
17    belief as to the truth of the remaining allegations in paragraph 33 of the complaint, and  
18    therefore denies them.

19          34.     LGE USA admits only that a letter dated May 14, 2013 by Chang H. Kim was  
20    sent to counsel for the plaintiff, which stated, among other things, that "we will promptly  
21    investigate this matter internally and take appropriate actions, as needed." LGE USA lacks  
22    sufficient knowledge or information to form a belief as to the truth of the remaining  
23    allegations in paragraph 34 of the complaint, and therefore denies them.

1           35.     LGE USA admits only that in-house counsel Soonja Bae continued to engage  
2 in subsequent communications with counsel for the plaintiff in responding to plaintiff's  
3 allegations and otherwise denies the allegations in paragraph 35 of the complaint.

4           36.     LGE USA is investigating plaintiff's allegations but currently lacks sufficient  
5 knowledge or information to form a belief as to the truth of the allegations in paragraph 36 of  
6 the complaint, and therefore denies them.

7           37.     LGE USA admits only that Soonja Bae continued to engage in subsequent  
8 communications with counsel for the plaintiff after June 10, 2013 and otherwise denies the  
9 allegations in paragraph 37 of the complaint.

10          38.     LGE USA admits only that it received a letter dated July 31, 2013 from  
11 counsel for the plaintiff and otherwise denies the allegations in paragraph 38 of the complaint.

12          39.     LGE USA denies that it reproduced, distributed, or displayed material that  
13 infringes any protectable elements of plaintiff's alleged works. LGE USA lacks sufficient  
14 knowledge or information to form a belief as to the truth of the remaining allegations in  
15 paragraph 39 of the complaint, and therefore denies them.

16          40.     LGE USA lacks sufficient knowledge or information to form a belief as to the  
17 truth of the allegations in paragraph 40 of the complaint, and therefore denies them.

18          41.     Admitted.

19          42.     LGE USA admits that on or around August 15, 2013, DataPro wrote to Ms.  
20 Bae, states that such writing is a written document that, as a whole, speaks for itself, and  
21 denies any remaining allegations contained in paragraph 42.

22          43.     LGE USA admits only that Soonja Bae continued to engage in subsequent  
23 communications with counsel for the plaintiff after August 15, 2013, and otherwise denies the  
24 allegations in paragraph 43 of the complaint.

1           44. LGE USA denies that it reproduced, distributed, or displayed material that  
2 infringes any protectable elements of plaintiff's alleged works. LGE USA lacks sufficient  
3 knowledge or information to form a belief as to the truth of the remaining allegations in  
4 paragraph 44 of the complaint, and therefore denies them.

5           45. LGE USA lacks sufficient knowledge or information to form a belief as to the  
6 truth of the allegations in paragraph 45 of the complaint, and therefore denies them.

7           46. LGE USA admits only that counsel for the plaintiff sent an email to Ms. Bae  
8 on or around August 22, 2013 repeating the alleged infringements and otherwise denies the  
9 allegations in paragraph 46 of the complaint.

10           47. LGE USA admits only that on or around August 22, 2013 Ms. Bae responded  
11 in an email that due to preexisting engagements, she and Mr. Kim "may not be available to  
12 talk to you by the second week of September," asked plaintiff to "[p]lease understand our  
13 unavailability for the next week conference call," and advised "[o]nce we are available to talk  
14 to you, we will contact you," and otherwise denies the allegations in paragraph 47 of the  
15 complaint

16           48. LGE USA admits only that on or around August 28, 2013 counsel for the  
17 plaintiff sent an email to Ms. Bae repeating the alleged infringements and requesting that she  
18 respond by August 30, 2013 to plaintiff's demands, and otherwise denies the allegations in  
19 paragraph 48 of the complaint.

20           49. LGE USA admits that Ms. Bae sent an email to counsel for the plaintiff on or  
21 around August 28, 2013 stating, among other things, that "[w]e will review all the web pages  
22 you have recently cited (they all appear to have the same short paragraph with generic  
23 information) and take appropriate steps," and "[a]fter our internal review, we will reach out to  
24



1 you should we believe that a call is necessary to move this matter forward,” and otherwise  
2 denies the allegations in paragraph 49 of the complaint

3 50. LGE USA denies the allegations in paragraph 50 of the complaint. The  
4 websites alleged in the complaint were not used to market or promote the selling of DVI  
5 components, and the descriptions relate to products that have been discontinued for some  
6 time.

7 **FIRST CAUSE OF ACTION—COPYRIGHT INFRINGEMENT OF THE DATAPRO**  
8 **WEB PAGES COPYRIGHT**

9 51. LGE USA restates and incorporates by reference its responses to paragraphs 1  
10 through 50 inclusive.

11 52. LGE USA lacks sufficient knowledge or information to form a belief as to the  
12 truth of the allegations in paragraph 52 of the complaint, and therefore denies them.

13 53. LGE USA denies the allegations in paragraph 53 of the complaint.

14 54. LGE USA denies the allegations in paragraph 54 of the complaint.

15 55. LGE USA denies the allegations in paragraph 55 of the complaint.

16 56. LGE USA denies the allegations in paragraph 56 of the complaint.

17 **SECOND CAUSE OF ACTION—COPYRIGHT INFRINGEMENT OF THE A**  
18 **COMPLETE GUIDE TO THE DIGITAL VIDEPO INTERFACE COPYRIGHT**

19 57. LGE USA restates and incorporates by reference its responses to paragraphs 1  
20 through 56 inclusive.

21 58. LGE USA lacks sufficient knowledge or information to form a belief as to the  
22 truth of the allegations in paragraph 58 of the complaint, and therefore denies them.

23 59. LGE USA denies the allegations in paragraph 59 of the complaint.

24 60. LGE USA denies the allegations in paragraph 60 of the complaint.

61. LGE USA denies the allegations in paragraph 61 of the complaint.

62. LGE USA denies the allegations in paragraph 62 of the complaint.

**THIRD CAUSE OF ACTION—REMOVAL OR ALTERATION OF COPYRIGHT  
MANAGEMENT INFORMATION FOR THE DATAPRO WEB PAGES COPYRIGHT**

63. LGE USA restates and incorporates by reference its responses to paragraphs 1 through 62 inclusive.

64. LGE USA denies the allegations in paragraph 64 of the complaint.

65. LGE USA denies the allegations in paragraph 65 of the complaint.

66. LGE USA denies the allegations in paragraph 66 of the complaint.

67. LGE USA denies the allegations in paragraph 67 of the complaint.

68. LGE USA denies the allegations in paragraph 68 of the complaint.

69. LGE USA denies the allegations in paragraph 69 of the complaint.

**FOURTH CAUSE OF ACTION—REMOVAL OR ALTERATION OF COPYRIGHT  
MANAGEMENT INFORMATION FOR THE A COMPLETE GUIDE TO THE  
DIGITAL VIDEO INTERFACE COPYRIGHT**

70. LGE USA restates and incorporates by reference its responses to paragraphs 1 through 69 inclusive.

71. LGE USA denies the allegations in paragraph 71 of the complaint.

72. LGE USA denies the allegations in paragraph 72 of the complaint.

73. LGE USA denies the allegations in paragraph 73 of the complaint.

74. LGE USA denies the allegations in paragraph 74 of the complaint.

75. LGE USA denies the allegations in paragraph 75 of the complaint.

76. LGE USA denies the allegations in paragraph 76 of the complaint.

**FIFTH CAUSE OF ACTION—FALSIFICATION OF COPYRIGHT MANAGEMENT  
INFORMATION FOR THE DATAPRO WEB PAGES COPYRIGHT**

77. LGE USA restates and incorporates by reference its responses to paragraphs 1 through 76 inclusive.

78. LGE USA lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 78 of the complaint, and therefore denies them.

79. LGE USA lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 79 of the complaint, and therefore denies them.

80. LGE USA lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 80 of the complaint, and therefore denies them.

81. LGE USA lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 81 of the complaint, and therefore denies them.

82. LGE USA denies the allegations in paragraph 82 of the complaint.

83. LGE USA denies the allegations in paragraph 83 of the complaint.

84. LGE denies the allegations in paragraph 84 of the complaint.

85. LGE USA denies the allegations in paragraph 85 of the complaint.

**SIXTH CAUSE OF ACTION—FALSIFICATION OF COPYRIGHT MANAGEMENT  
INFORMATION FOR THE A COMPLETE GUIDE TO THE DIGITAL VIDEO  
INTERFACE COPYRIGHT**

86. LGE USA restates and incorporates by reference its responses to paragraphs 1 through 85 inclusive.

87. LGE USA lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 87 of the complaint, and therefore denies them.

1           88.     LGE USA lacks sufficient knowledge or information to form a belief as to the  
2 truth of the allegations in paragraph 88 of the complaint, and therefore denies them.

3           89.     LGE USA lacks sufficient knowledge or information to form a belief as to the  
4 truth of the allegations in paragraph 89 of the complaint, and therefore denies them.

5           90.     LGE USA lacks sufficient knowledge or information to form a belief as to the  
6 truth of the allegations in paragraph 90 of the complaint, and therefore denies them.

7           91.     LGE USA denies the allegations in paragraph 91 of the complaint.

8           92.     LGE USA the allegations in paragraph 92 of the complaint.

9           93.     LGE USA denies the allegations in paragraph 93 of the complaint.

10          94.     LGE USA denies the allegations in paragraph 94 of the complaint.

11                   **PRAYER FOR RELIEF**

12           WHEREFORE, LGE USA denies that (i) plaintiff is entitled to any relief requested by  
13 plaintiff in its prayer for relief; and (ii) that LGE USA is directly, contributorily, vicariously,  
14 jointly and severally, or otherwise liable for any of the alleged violations listed in the  
15 complaint. LGE USA respectfully requests judgment in its favor and against plaintiff  
16 DataPro International, Inc. on all of the counts alleged in the complaint, and for an award of  
17 attorneys' fees pursuant to 17 U.S.C. § 505 and for costs, and for such other and further relief  
18 as the Court deems just and proper.

19                   **AFFIRMATIVE DEFENSES**

20           LGE USA further responds to plaintiff's complaint by alleging the following  
21 affirmative defenses:  
22

23                   **FIRST DEFENSE**

24          1.       The complaint fails to state a claim for which relief can be granted.

**SECOND DEFENSE**

2. Plaintiff's claims are barred, in whole or in part, by licenses, express and implied, granted or authorized to be granted by plaintiff and/or to LGE USA by operation of law.

**THIRD DEFENSE**

3. Plaintiff's claims are barred, in whole or in part, because LGE USA's use, if any, of plaintiff's alleged works did not involve use of any protectable elements of plaintiff's works.

**FOURTH DEFENSE**

4. Plaintiff's claims are barred, in whole or in part, because LGE USA removed the allegedly offending materials upon receipt of notice from the plaintiff.

**FIFTH DEFENSE**

5. Plaintiff's claims are barred, in whole or in part, because LGE USA's use, if any, of plaintiff's alleged works was *de minimis*.

**SIXTH DEFENSE**

6. Plaintiff's claims are barred, in whole or in part, by the doctrine of fair use.

**SEVENTH DEFENSE**

7. Plaintiff's claims are barred, in whole or in part, by the doctrine of copyright misuse.

**EIGHTH DEFENSE**

8. Plaintiffs' claims are barred, in whole or in part, to the extent that the acts complained of occurred in other countries and are not actionable under U.S. copyright law.

**NINTH DEFENSE**

9. Plaintiff's third and fourth causes of action are barred, in whole or in part, because the materials allegedly removed or altered do not involve technical measures of automated systems or otherwise constitute copyright management information.

**TENTH DEFENSE**

10. Plaintiff's third and fourth causes of action are barred, in whole or in part, because the alleged materials that purportedly constitute the plaintiff's copyright management information were not sufficiently proximate to the body or area around plaintiff's alleged works.

**ELEVENTH DEFENSE**

11. Plaintiff's fifth and sixth causes of action are barred, in whole or in part, because displaying a general copyright notice on a website is not actionable and does not constitute false copyright management information.

**TWELFTH DEFENSE**

12. Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, acquiescence, laches, estoppel, and unclean hands.

**THIRTEENTH DEFENSE**

13. Upon information and belief, plaintiff's claims to statutory damages and attorneys' fees are barred in whole or in part by plaintiff's failure to timely register its works, and the fact that its alleged "works" appear to be one work.

**FOURTEENTH DEFENSE**

14. Plaintiff's claims to statutory damages are barred, in whole or in part, because the alleged infringement, if any, was innocent.

**FIFTEENTH DEFENSE**

15. Any award of statutory damages against LGE USA that does not bear a reasonable relationship to any actual damages would be unconstitutional as violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

**SIXTEENTH DEFENSE**

16. Plaintiff's claims for damages are barred, in whole or in part, because plaintiff has failed to mitigate its damages.

**RESERVATION OF RIGHTS AND DEFENSES**

LGE USA reserves the right to raise additional defenses as it becomes aware of them.

**LGE USA PRAYER FOR RELIEF**

WHEREFORE, LGE USA prays for judgment as follows:

- (a) That plaintiff take nothing by way of the complaint and the Court dismiss the complaint with prejudice;
- (b) That the Court enter judgment that LGE USA is the prevailing party in this action;
- (c) That the Court award LGE USA its attorneys' fees pursuant to 17 U.S.C. § 505 and costs; and
- (d) That the Court award any and all other relief to which LGE USA may be entitled.

1 DATED this 13<sup>th</sup> day of December, 2013.

2 CORR CRONIN MICHELSON  
3 BAUMGARDNER & PREECE LLP

4 s/ Kelly P. Corr

5 Kelly P. Corr, WSBA No. 555  
6 Paul R. Raskin, WSBA No. 24990  
7 Kelly H. Sheridan, WSBA No. 44746  
8 1001 Fourth Avenue, Suite 3900  
9 Seattle, Washington 98154-1051  
10 Tel: (206) 625-8600  
11 Fax: (206) 625-0900  
12 Email: [kcorr@corrchronin.com](mailto:kcorr@corrchronin.com)  
13 [praskin@corrchronin.com](mailto:praskin@corrchronin.com)  
14 [ksheridan@corrchronin.com](mailto:ksheridan@corrchronin.com)

15 s/ Ian C. Ballon

16 s/ Lori Chang

17 Ian C. Ballon (*pro hac vice application to be*  
18 *submitted*)  
19 Lori Chang (*pro hac vice application to be*  
20 *submitted*)  
21 GREENBERG TRAURIG LLP  
22 1840 Century Park East, Suite 1900  
23 Los Angeles, CA 90067  
24 Tel: (310) 586-7700  
Fax: (310) 586-7800  
Email: [ballon@gtlaw.com](mailto:ballon@gtlaw.com)  
[changl@gtlaw.com](mailto:changl@gtlaw.com)

Attorneys for Defendant  
LG Electronics U.S.A., Inc.



**CERTIFICATE OF SERVICE**

I hereby certify on December 13, 2013, I electronically filed the foregoing with the Clerk of the U.S. District Court for the Western District of Washington using the CM/ECF system, which will send notification of such filing to the following:

Eric S. Meltzer  
Meltzer Law  
107 S.E. Washington Street, Suite 410  
Portland, OR 97214  
[eric@meltzergrant.com](mailto:eric@meltzergrant.com)  
Attorneys for Plaintiff

DATED this 13<sup>th</sup> day of December, 2013, at Seattle, Washington.

CORR CRONIN MICHELSON  
BAUMGARDNER & PREECE LLP

s/ Kelly P. Corr  
Kelly P. Corr, WSBA No. 555  
1001 Fourth Avenue, Suite 3900  
Seattle, Washington 98154-1051  
Tel: (206) 625-8600  
Fax: (206) 625-0900  
Email: [kcorr@corrchronin.com](mailto:kcorr@corrchronin.com)

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CORR CRONIN MICHELSON  
BAUMGARDNER & PREECE LLP  
1001 Fourth Avenue, Suite 3900  
Seattle, Washington 98154-1051  
Tel (206) 625-8600  
Fax (206) 625-0900